

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRENDA BARRINGER,

Defendant.

Case No. 3:22-cr-00018-HDM-CLB

ORDER

The defendant, Brenda Barringer, has filed a motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10 and Amendment 821 (ECF No. 61). On June 24, 2024, the Federal Public Defender filed a "Notice of Non-Eligibility" pursuant to Second Amended General Order 2023-09, indicating that Barringer is not entitled to a sentence modification under Amendment 821. (ECF No. 68). The court agrees.

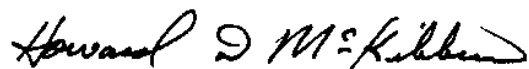
Section 3582(c)(2) allows the court to modify a term of imprisonment for "a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by" a retroactive amendment to the Sentencing Guidelines. See *id.*; U.S.S.G. § 1B1.10(a)(1)-(2). After Barringer was sentenced, U.S.S.G. § 4A1.1 was amended - by way of Amendment 821 - to reduce or eliminate the number of criminal history points counted when an offender commits the instant offense while under a criminal justice sentence, otherwise referred to as "status points." Prior to the amendment, qualifying offenders, like Barringer, received two

1 status points. Following the amendment, only one point is now
2 assigned, and only to an offender who has 7 or more other
3 criminal history points. The amendment was made retroactive and
4 may therefore support a sentence modification under § 3582(c)(2)
5 and U.S.S.G. § 1B1.10. U.S.S.G. § 1B1.10(d).

6 Here, the PSR calculated Barringer's criminal history score
7 to be 10, including her two status points. (PSR ¶ 49). This
8 would have put Barringer into a criminal history category V. But
9 at sentencing, the court determined it would not assign one
10 point for Barringer's ¶ 42 conviction, which reduced Barringer's
11 score to 9 and her category to IV. Because Barringer had at
12 least 7 criminal history points before receiving the status
13 points, her criminal history score is reduced by one point
14 pursuant to Amendment 821. With a criminal history score of 8,
15 however, Barringer is still a category IV, so her guideline
16 range does not change. Thus, because Amendment 821 did not have
17 the effect of lowering the guideline range applicable in this
18 case, Barringer is not eligible for relief under § 3582(c)(2)
19 and U.S.S.G. § 1B1.10.¹ The motion for sentence reduction (ECF
20 No. 61) must be, and hereby is, DENIED.

21 IT IS SO ORDERED.

22 DATED: This 2nd day of July, 2024.

23 
24

25 UNITED STATES DISTRICT JUDGE

26
27 ¹ Amendment 821's other retroactive provision relates to a
28 reduction in offense level for certain zero-point offenders.
Because Barringer was not a zero-point offender, this provision
does not apply.